

7/26/10 (10)

Christine Joyce

From: Steve Ledoux
Sent: Thursday, July 22, 2010 4:28 PM
To: Christine Joyce
Subject: FW: Acton/GenSel - Boxborough Home rule legislation as to AWD water rights

For packet on Boxboro H2O

Steven L. Ledoux
 Town Manager
 472 Main St
 Acton, MA 01720
 Telephone: (978) 264-9612
 Fax: (978) 264-9630

When writing or corresponding, please be aware that the Secretary of State has determined that most email is a public record and, therefore, may not be kept confidential.

From: Stephen D. Anderson [mailto:SAnderson@AndersonKreiger.com]
Sent: Thursday, July 22, 2010 4:27 PM
To: Steve Ledoux
Cc: Lauren Rosenzweig Morton
Subject: RE: Acton/GenSel - Boxborough Home rule legislation as to AWD water rights

Hi Steve:

There are more recent emails on this subject than the email trail below. See attached.

According to Chris Allen, "Based on recent communications with the commissioners, we [AWD] are going to continue our discussions at our next scheduled board meeting on 7/19, and have reached out to Senator Eldridge to inform him of our desire to keep our options open to further opinion on the Home Rule Petition."

So I recommend that you have Roland follow up with Chris to learn what the AWD commissioners have decided to do on this subject. If AWD is pursuing it appropriately, the Town should (a) ask AWD if it wants the Town's assistance and (b) otherwise take a back seat and monitor AWD's progress. If AWD has dropped the ball, the Selectmen should consider whether to press AWD again and/or inquire further with Jamie Eldridge's office as to what can be done.

If Acton wants to weigh in with the General Court, the main legal issue may be as follows: Can the General Court at the behest of Boxborough adopt home rule legislation which deprives a statutorily-created water district (the Acton Water District) and by extension to residents of the Town of Acton of water rights previously vested by an act of the legislature in the AWD? This is a complicated legal issue which begins with Article 89 of the Amendments to the Constitution [the Home Rule Amendment] which provides in relevant part as follows:

Section 8. Powers of the General Court. - The general court shall have the power to act in relation to cities and towns, but only by general laws which apply alike to all cities or to all towns, or to all cities and towns, or to a class of not fewer than two, and by special laws enacted (1) on petition filed or approved by the voters of a city or town, or the mayor and city council, or other legislative body, of a city, or the town meeting of a town, with respect to a law relating to that city or town; (2) by a two-thirds vote of each branch of the general court following a recommendation by the governor; (3) to erect and constitute metropolitan or regional entities, embracing any two or more cities or towns or cities and towns, or established with other than existing city or town boundaries, for any general or special public purpose or

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purposes, and to grant to these entities such powers, privileges and immunities as the general court shall deem necessary or expedient for the regulation and government thereof; or (4) solely for the incorporation or dissolution of cities or towns as corporate entities, alteration of city or town boundaries, and merger or consolidation of cities and towns, or any of these matters.

...

Section 9. Existing Special Laws. - All special laws relating to individual cities or towns shall remain in effect and have the force of an existing city or town charter, but shall be subject to amendment or repeal through the adoption, revision or amendment of a charter by a city or town in accordance with the provisions of sections three and four and shall be subject to amendment or repeal by laws enacted by the general court in conformity with the powers reserved to the general court by section eight.

Since Boxborough's proposed legislation would affect not just Boxborough but also AWD and AWD's rights vested by prior act of the legislature, the contention is that the General Court cannot amend or repeal AWD's prior legislation by a special act initiated by one town (Boxborough) but can do so "only by general laws which apply alike to all cities or to all towns, or to all cities and towns, or to a class of not fewer than two [towns]." As with all constitutional questions, it's complicated, and I would want to research the issue before going to Beacon Hill with the argument.

Let me know if you want us to look into this further.

Steve

From: Steve Ledoux [mailto:sledoux@acton-ma.gov]
Sent: Wednesday, July 21, 2010 2:16 PM
To: Stephen D. Anderson
Cc: Lauren Rosenzweig Morton
Subject: RE: Acton/GenSel - Boxborough Home rule legislation as to AWD water rights
Importance: High

Steve

The Board wants to discuss on Monday night

Do you have any recommendations on how we should proceed? What legal ramifications are there that we should be concerned about?

If I could have something by noon tomorrow, that would be great.

Steven L. Ledoux
Town Manager
472 Main St
Acton, MA 01720
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When writing or corresponding, please be aware that the Secretary of State has determined that most email is a public record and, therefore, may not be kept confidential.

From: Stephen D. Anderson [mailto:SAnderson@AndersonKreiger.com]
Sent: Thursday, June 24, 2010 1:32 PM

7/23/2010

To: lawmbs@aol.com; Chris Allen
Cc: Steve Ledoux; Roland Bartl; Doug Halley
Subject: RE: Acton/GenSel - Boxborough Home rule legislation as to AWD water rights

Thanks Mary. You and Chris know the AWD's aquifer usage much better than we do. But I am a little curious about AWD's conclusion to take a pass on this given that:

- The Home Rule legislation has the potential to affect both existing and proposed AWD drinking water supply wells.
- The AWD map linked at <http://www.actonwater.com/> indicates that AWD already draws water from Boxborough water sources.
- Both the Zone 1 and the Zone 2 of the AWD wells on Mass. Ave. extend quite far into Boxborough. At their current production levels the wells create a cone of depression into Boxborough that could be prohibited by this petition. (See the attached map of the groundwater resources in Acton.)

Steve

From: lawmbs@aol.com [mailto:lawmbs@aol.com]
Sent: Thursday, June 24, 2010 11:56 AM
To: Stephen D. Anderson; chris@actonwater.com
Subject: Re: Acton/GenSel - Boxborough Home rule legislation as to AWD water rights

Hi Steve,

Although the District was informed only after Boxborough had discussed and voted on the issue, and learned of it through the same source as the Town, the District has no opposition at this time to Boxborough's proposed legislation.

Mary
Mary E. Bassett, Esq.
Of Counsel to:
McWalter, Barron & Boisvert, P.C.
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Concord, MA 01742
Telephone: 978-369-2252
Fax: 978-369-6989

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-----Original Message-----

From: Stephen D. Anderson <SAnderson@AndersonKreiger.com>
To: lawmbs@aol.com
Cc: Steve Ledoux <sledoux@acton-ma.gov>; Roland Bartl <rbartl@acton-ma.gov>; Doug Halley <dhalley@acton-ma.gov>
Sent: Wed, Jun 23, 2010 5:49 pm
Subject: Acton/GenSel - Boxborough Home rule legislation as to AWD water rights

Mary:

Sen. Eldridge has asked if Acton has any comments on the attached home rule petition of Boxboro. It directly affects the AWD. Roland has emailed it to Chris Allen. I assume you and Chris will coordinate AWD's response.

7/23/2010

Christine Joyce

From: Chris Allen
Sent: Thursday, July 01, 2010 10:15 AM
To: Roland Bartl
Cc: lawmbs@aol.com; Stephen Anderson; Steve Ledoux; len.idea@districtenergy.org; parenti@ll.mit.edu; stuntzsc@acornlab.com
Subject: RE: Acton/GenSel - Boxborough Home rule legislation as to AWD water rights

Roland,

We appreciate your input on this matter. Based on recent communications with the commissioners, we are going to continue our discussions at our next scheduled board meeting on 7/19, and have reached out to Senator Eldridge to inform him of our desire to keep our options open to further opinion on the Home Rule Petition.

Thank for your feedback, and assistance.

Best regards,
Chris



Chris Allen
District Manager
Water Supply District of Acton
PO Box 953
Acton, MA 01720
Ph # 978-263-9107
Fax# 978-264-0148
email: chris@actonwater.com

"When the well's dry, we know the worth of water," --Benjamin Franklin 1774.

From: Roland Bartl [mailto:rbartl@acton-ma.gov]
Sent: Thursday, June 24, 2010 9:40 PM
To: Chris Allen
Cc: 'lawmbs@aol.com'; Stephen Anderson; Steve Ledoux
Subject: RE: Acton/GenSel - Boxborough Home rule legislation as to AWD water rights

Chris -

The potential problem I see, if this passes in its present form, is that Boxborough for whatever reason could give you trouble at some point in the future for pumping a well that has a Zone 2 extending onto Boxborough. As far as I know, a Zone 2 defines the extend to which water can be drawn towards the well under severe drought conditions. There is quite a good portion of the Clapp & Whitcomb wells' Zone 2's in Boxborough. While this may

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not be Boxborough's present intent, I believe the language of the proposed law could easily be interpreted that way in future - in fact that is exactly what I saw first when I read it. A simple amendment to the bill that would exempt all any water supply sources of the AWD could fix the problem. I strongly recommend that the AWD or the Town weigh in. If Boxborough has a problem with such an amendment, you will know what their real intent is.

Regards -

Roland Bartl, AICP
Planning Director
472 Main Street
Acton, MA 01720
(978) 264-9636

From: Chris Allen [mailto:Chris@actonwater.com]
Sent: Thursday, June 24, 2010 1:49 PM
To: Stephen Anderson; lawmbs@aol.com
Cc: Steve Ledoux; Roland Bartl; Doug Halley
Subject: RE: Acton/GenSel - Boxborough Home rule legislation as to AWD water rights

Steve,

Thanks for the feedback.

We currently have mechanisms, "Best Effort" letters, that we send to surrounding communities to encourage them to adopt by-laws to protect the drinking water supply for recharge zones that extend beyond Acton's borders. Similarly, we have groundwater recharge zones that extend in Concord, Carlisle, Westford & Maynard. All of which have received the same requests. I'm not sure where you are seeing that we currently draw water from Boxborough, other than the Zone II's that extend into Boxborough for the Clapp & Whitcomb sources located here at, and adjacent to, 693 Mass Ave?

There is a potential well site that is very close to the Acton-Boxborough line behind our main office, but we do not currently have any active supplies within the town boundaries of Boxborough.

Please let me know if I can be of further assistance.

Regards,



Chris Allen
District Manager
Water Supply District of Acton
PO Box 953
Acton, MA 01720
Ph # 978-263-9107
Fax# 978-264-0148

7/23/2010

email: chris@actonwater.com

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ANDERSON & KREIGER LLP
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7/23/2010

Zone 2 for Conant Wells
Adopted in Article 32-2 of the
4/97 Town Meeting



Conant I

Davis Rd.

R.R. track

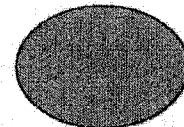
Brook St.

Main St.

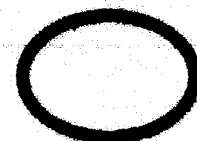
Conant II

Great Rd.

CONANT WELLS - ZONE 2



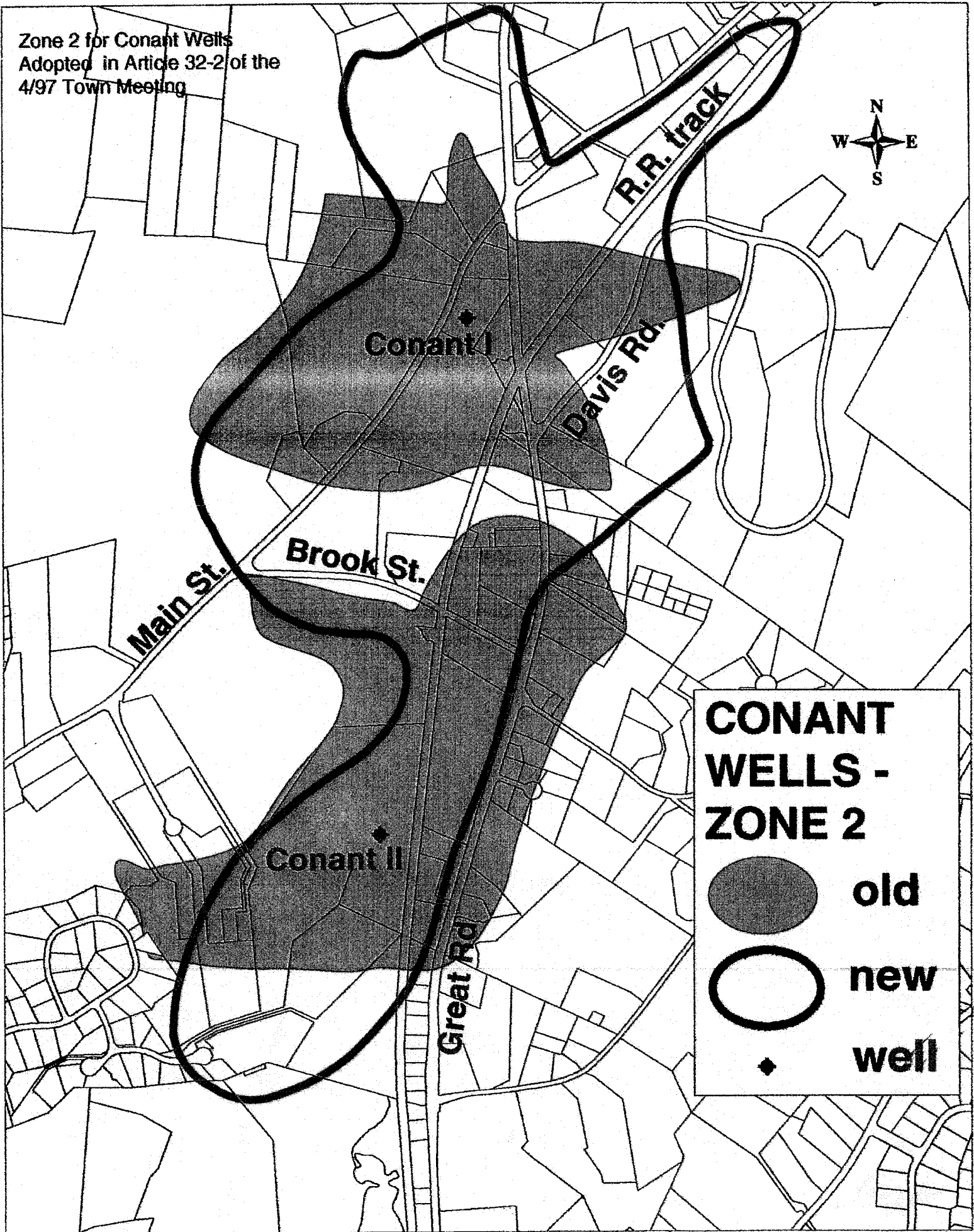
old



new

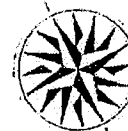


well

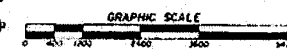


BOXBOROUGH

FORT POND



GROUNDWATER PROTECTION DISTRICT MAP
OF THE TOWN OF
ACTON, MASSACHUSETTS
MAP No. 3A
SCALE 1" = 2,700' JANUARY 1989



- KEY:
- ZONE 1
 - ZONE 2
 - ZONE 3
 - ZONE 4

STOW

LITTLETON

NAGOG

MAYNARD

WESTFORD

CARLISLE

CONCORD

- STREET DESIGNATIONS
- PUBLIC WAYS
 - PRIVATE, UNACCEPTED ROAD APPROVED UNDER THE SUBDIVISION CONTROL LAW
 - PRIVATE WAYS

MAP PREPARED FOR THE ACTON PLANNING BOARD
BY THE ACTON ENGINEERING DEPARTMENT
STREETS AMENDED TO JULY 1, 1988
ZONING ADOPTED APRIL 11, 1989

AQUIFER PROTECTION
ACTON, MASS.

TOWNWIDE MAP
JANUARY 1989

FIGURE No. 1

FILE NO. M-10867

